questions of taxation. One section of the Act imposed a tax on "each sale, agreement of sale, or agreement to sell any products or merchandise at any exchange or board of Trade or other similar place" and required a stamped memorandum to be delivered to the buyer. It was contended that this amounted to a tax on the property sold and so was a direct tax, but the court, refusing so microscopic and theoretical a point of view, declared it a tax on the privilege or facility of carrying on sales in a general market, and so clearly in the nature of a duty or excise. The decision seems most sensible. The "privileges" of bankers, brokers, and the like have been constantly taxed, and such a tax has been, and may be, administered by stamps as well as by a fixed license fee. It was contended that the tax was not uniform, since it did not include all sales, that it was unfair to discriminate between sales at exchanges and sales at other places, that this was substantially a tax on the right to transact business and that exchanges should not be thus singled out, but that contention simply shuts its eyes to the facts regarding exchanges. Sales at exchanges do differ radically from sales at any other place, "the privilege of effecting such sales is so far distinct as to create a reasonable and substantial ground for classification and for taxation when similar sales at other places are untaxed." *Gulf, Colorado, & Santa Fé Ry.* v. *Ellis*, 165 U. S. 150, 155. Again the tax is geographically uniform and by means of the stamps regulates the amount to be paid by the extent to which the privilege is used. Surely there can be no ground for objection on the score of uniformity.

Another point, this time in regard to the interpretation of the Act, is decided in the case, that a sale of live stock at the Union Stock Yards in Chicago counts within the statute as a sale "at any exchange, or board of trade, or other similar place." This construction, clearly in line with the decision as to the constitutional question in the main branch of the case, seems broad enough to include any place where buyers and sellers have exceptional facilities for transacting sales of chattels of any sort.

WRITTEN CONTRACTS AND EXTRINSIC EVIDENCE. — In *Violette* v. *Rice*, 53 N. E. Rep. 144 (Mass.), the plaintiff contracted with the defendant to take the part of "Bertha Gessler" in a play called "Excelsior, Junior." The agreement was in writing and required the plaintiff "to render services at any theatre." The contention was that the word "services" was orally agreed at the time of the contract to mean services in a particular part. But the court refused to vary the words of the contract by an extrinsic agreement which, it declared, contradicted the written language. An engagement for services was a general employment which could not be specially limited to a single part.

It is commonly stated that parol evidence is inadmissible to vary a written instrument. But this is merely stating a rule of substantive law under the guise of a rule of evidence. If the law of deeds or wills refuses to allow a certain claim or defence, parol evidence is of course inadmissible to prove it, for even if established it will do no good. Thayer, Preliminary Treatise on evidence, p. 409. The general rule, however, is by no means inflexible and the substantive law of writings often allows contemporaneous collateral matter to affect a written instrument. But the cases are not unanimous as to how far a court may wander from the document before it. *Naumberg* v. *Young*, 44 N. J. Law, 331,

declares that if the writing appears on its face to contain the full engagement of the parties, no extrinsic agreement can be shown. This rigid doctrine, aimed to simplify, is really unworkable. It is often harsh and unjust and, like the old Statute of Fines, must break down under such defences as fraud and mistake. A better rule — practicable and just — is that of *Chapin* v. *Dobson*, 78 N. Y. 74. The incompleteness of the instrument need not appear on its face. If viewed in the light of all the surrounding circumstances, it does not appear to contain the whole agreement between the parties, an additional collateral bargain may be shown, subject always to the proviso that the sound judgment of the court does not regard it as inconsistent with the actual terms of the document. *Brown* v. *Byrne*, 3 E. & B. 703.

Under this lenient rule the result of the present case is too rigid. In the case of an actor of little note the term "services" might well be applied to any part which emergency might require. But in the case of a well-known performer one might expect an engagement of a particular character. Extrinsic facts would seem to indicate that the plaintiff was accustomed to take certain parts such as she contended was the actual understanding of the parties. In the light of all the circumstances the contract would not appear to be complete, and the collateral agreement not repugnant to the writing. Apart from any technical meaning of the word "services," a question not raised in the case, the Massachusetts court might sustain the defendant in compelling the plaintiff to shift scenery.

CONTRACTS — MEASURE OF DAMAGES. — In the case of *Connolly* v. *Sullivan*, 53 N. E. Rep. 143 (Mass.), the view is expressed that, when one party to a contract is prevented by the other from completing performance, the one so prevented may recover the value of the labor and materials already furnished, independently of the contract price. The facts show that an agreement was made by terms of which certain excavations were to be made for a stipulated sum. The work proved more expensive than was contemplated. The plaintiff, however, continued until stopped by the defendant, at which time the value of labor and materials furnished was considerably in excess of the sum for which the plaintiff had contracted to do the whole work. The question, then, was whether the plaintiff in view of such a termination of the contract by the defendant should be allowed to recover the full value of such labor and materials, regardless of the contract price.

A distinction is to be made between those cases when the plaintiff himself is in default, and when, as in this instance, the defendant prevents further performance. Keener, Quasi-Contracts, p. 313, n. In this latter class of cases, there is a conflict of authority. In *Koon* v. *Greenman*, 7 Wend. 121, when work was stopped by reason of defendant's failure to furnish materials as agreed, a ruling that recovery was not limited by the rates of contract was reversed as error. But in *Derby* v. *Johnson*, 21 Vt. 17, the plaintiff recovered an amount in excess of the contract price. The court attempted to distinguish the case from *Koon* v. *Greenman*, *supra*, but its success is at least open to question. *Doolittle* v. *McCullough*, 12 Ohio St. 360, presents facts not unlike the present case. There a charge that the value of the work was to be found without reference to the contract was held erroneous.